

BellSouth stated that these items and their rates are consistent with the Commission's previous orders.<sup>35</sup>

Section VI of the Statement relates to unbundled local switching. BellSouth stated that it offers a variety of switching ports and associated usage unbundled from transport, local loop transmission and other services. These include a 2-wire and 4-wire analog port, 2-wire ISDN digital and 4-wire ISDN DS1 port, and 2-wire analog hunting. Additional port types are available under the Bona Fide Request process. Until a long-term solution is developed, BellSouth stated that it provides selecting routing on an interim basis to a CLEC's desired platform using line class codes (subject to availability).<sup>36</sup>

BellSouth asserted that the Statement offers nondiscriminatory access to 911 and E911 services, directory assistance, and operator call completion services, to both facilities-based providers and resellers. In Section VII of the Statement, BellSouth offers to perform directory assistance and other number services on behalf of facilities-based CLECs, which allow end user customers in exchanges served by BellSouth to access BellSouth's directory assistance service by dialing 411 or the appropriate area code and 555-1212. BellSouth asserted that it offers CLECs access to its Directory Assistance database under the same terms and conditions currently offered to other telecommunications providers. BellSouth makes available its operator services in the same manner that it provides operator services to its own customers. In addition, BellSouth stated that it offers Centralized Message Distribution System ("CMD5") - Hosting and Non-Sent Paid Report System processing. BellSouth asserted that its provision of 911, directory assistance, and operator call completion services, as well as the rates for these services, are consistent with the Commission's previous orders.<sup>37</sup>

According to BellSouth, its Statement provides nondiscriminatory access to databases and associated signaling necessary for call routing and completion, including Signaling Links, Signal Transfer Points, and Service Control Points ("SCPs") (databases). The SCPs/Databases to which CLECs have access include, but are not limited to, Line Information Database ("LIDB"), Toll Free Number Database, Automatic Location Identification and Data Management System, Advanced Intelligent Network, and Selecting Routing. BellSouth stated that its signaling/database offering for call routing and completion is consistent with the Commission's previous orders.<sup>38</sup>

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<sup>35</sup> BellSouth Brief at 8, citing Tr. 310-13 (BST witness Scheye).

<sup>36</sup> BellSouth Brief at 8, citing Tr. 313-18 (BST witness Scheye).

<sup>37</sup> BellSouth Brief at 9, citing Tr. 318-31 (BST witness Scheye).

<sup>38</sup> BellSouth Brief at 10, citing Tr. 335-43 (BST witness Scheye).

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BellSouth added that it arranges with its directory publisher to make available White Pages directory listings to CLECs and their subscribers which include the subscriber's name, address, and telephone number. BellSouth asserted that CLEC subscribers receive no less favorable rates, terms, and conditions for directory listings than are provided to BellSouth's subscribers (e.g., the same information is included, the same type size is used, and the same geographic coverage is offered).<sup>39</sup> In addition, BellSouth asserted that it is providing nondiscriminatory access to telephone numbers. BellSouth serves as the North American Numbering Plan ("NANP") Administrator for its territory, and stated that it has established procedures to provide nondiscriminatory NXX code assignments to CLECs.<sup>40</sup>

BellSouth's Statement describes the interim number portability arrangements that are available, which include Remote Call Forwarding ("RCF") and Direct Inward Dialing ("DID"). BellSouth asserted that these arrangements comply with the FCC's regulations issued on July 2, 1996, in the First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-116. BellSouth asserted that these arrangements, and the rates for RCF and DID, are consistent with this Commission's previous orders, and added that in conjunction with other industry participants BellSouth is pursuing an aggressive schedule to implement a long-term number portability solution as required by FCC orders.<sup>41</sup>

BellSouth stated that the local dialing parity requirement of Section 251(b)(3) is met because local service subscribers in BellSouth's region dial the same number of digits to place a local call, without the use of an access code, regardless of their choice of local service provider.<sup>42</sup>

A primary objection by intervenors was that nondiscriminatory operations support systems (OSS) have not yet been developed, tested, and implemented, and thus that CLECs do not have access to unbundled elements on the same basis that BellSouth has access to the same elements.<sup>43</sup> AT&T, MCI and others argued that before the Commission can approve any Statement, BellSouth must demonstrate that all the interfaces offered in the Statement for access to OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing are operationally ready for the purpose of providing service through resale and unbundled network elements. AT&T pointed out that BellSouth admitted that the interfaces to its OSS as described in Section 2 of the Statement are not

<sup>39</sup> BellSouth Brief at 9-10, citing Tr. 331-34 (BST witness Scheye).

<sup>40</sup> BellSouth Brief at 10, citing Tr. 334-35 (BST witness Scheye).

<sup>41</sup> BellSouth Brief at 10-11, citing Tr. 343-48 (BST witness Scheye), Tr. 2195-96 (AT&T witness Danforth).

<sup>42</sup> BellSouth Brief at 11, citing Tr. 348-50 (BST witness Scheye).

<sup>43</sup> See, e.g., Tr. 387-89 (BST witness Scheye); Tr. 2047, 2053 (AT&T witness Pfau); Tr. 3045-53, 3062, 2077 (BST witness Calhoun).

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yet available for use by CLECs," and AT&T asserted that the interfaces are not operationally ready.<sup>45</sup> AT&T argued that even if the interfaces were operational, there is no evidence before the Commission to indicate that the interfaces would be nondiscriminatory; it is not evident that the testing being done addresses whether the interfaces will provide an experience equivalent to the customer's experience in ordering and receiving BellSouth services. (AT&T Brief at 15-18.) MCI stated that it is undisputed that many of BellSouth's systems are still in development, some planned systems do not conform with industry standards, and none is fully tested and operational. (MCI Brief at 6.)

MCI argued that, to the extent new competitors must rely on the incumbent LEC's networks and OSS capabilities for a realistic opportunity to compete, it will be essential for the incumbent LEC to develop and implement OSS interfaces and downstream processes sufficient to ensure that they can provide unbundled network elements and resale in a timely, reliable, and nondiscriminatory fashion in volumes that realistically reflect market demand. MCI contended that paper promises are not enough to ensure effective real-world application, and that Act compliance calls for parity in at least three respects: the scope of information available, the accuracy of information supplied, and the timeliness of communications. After detailed criticism of the status of development, MCI concluded that BellSouth has not shown it is providing OSS that meets the Act's requirement that it can actually be used. (MCI Brief at 15-19.)

The Consumers' Utility Counsel, while recommending that the Statement be allowed to take effect, identified the operations support systems (OSS) as "one of the most troublesome issues confronting the Commission." (CUC Brief at 6.) OSS is evolving from a manual, carrier-specific process to electronic interfaces that require extensive industry development, communication and coordinated effort as between competing carriers. The CUC noted that there are difficult privacy issues that concern the pre-ordering phase. The CUC concluded that there does not appear to be any "final" or permanent method or methods by which it can be concluded that the OSS offered at a given time suffices for future interactions between BellSouth and CLECs. The relative scarcity of access lines provided presently by CLECs in Georgia, according to the CUC, underscores the testimony of CLEC witnesses that many of the OSS systems have not been implemented or tested under circumstances in which there are large volumes of orders.<sup>46</sup> The CUC recommended that the SGAT be allowed to take effect, and that the Commission keep the docket open under Section 252(f)(4) of the Act in order to address and review such issues that may arise.

ACSI's testimony documented significant problems that ACSI experienced in completing its initial unbundled loop cutovers from BellSouth and in providing quality service over BellSouth

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<sup>44</sup> Tr. 382 (BST witness Scheye).

<sup>45</sup> Tr. 2047 (AT&T witness Pfau).

<sup>46</sup> CUC Brief at 6, citing Tr. 1230 (ACSI witness Robertson).

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unbundled loops. Specifically, Mr. Robertson testified to undue delays and serious customer service disruptions experienced by ACSI in the provisioning of unbundled loops and number portability. These are the subject of ACSI's complaints to the FCC and to this Commission in Docket No. 7212-U. ACSI also presented evidence and expressed concern as to whether BellSouth's building management preferred provider, exclusive sales agency, and contract sales arrangements are anticompetitive.<sup>47</sup>

In addition to difficulties experienced with on-net and off-net service for customers of ACSI and MFS (which have their own fiber loops), and the testing for provisioning unbundled loops, ICI has not been able to obtain local transport due to BellSouth delays in providing other elements ICI needed to enter the local exchange market as a facilities-based competitor.<sup>48</sup> Therefore, they argue, the terms and conditions for access to unbundled elements are not just, reasonable, or nondiscriminatory, as required by Section 251(c)(3). They also contended that the OSS interfaces must be proven to work under actual conditions before the Commission can determine whether they comport with the requirements of Section 251. These arguments were advanced by ACSI, AT&T, ICI, MCI, MFS, and Sprint.

MCI objected that the Statement does not make clear that BellSouth offers common (local) transport. According to MCI, BellSouth's first clear offer to provide common transport appeared in its rebuttal testimony, and should be clarified in the Statement.<sup>49</sup>

With respect to resale, MFS recounted problems such as disconnection of the customer during conversion of the customer's service over to MFS, although disconnection should never have occurred in the first place and the reconnection was not prompt.<sup>50</sup> AT&T argued that this example shows resale is not yet "available" under the Statement. (AT&T Brief at 23-24.) MCI also stated that the Statement is deficient because it does not provide for notification to resellers when their customers have migrated to another carrier. Prompt notification is important so that the reseller can adjust its billing system to stop billing its former customers. Further, MCI noted that the SGAT does not make Centrex services available for resale as grandfathered services, even though both the Commission and the FCC have required that such grandfathered services be available for resale.<sup>51</sup>

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<sup>47</sup> ACSI Brief at 4-5, citing its witness Robertson's prefiled direct testimony at 8-10, 16-19.

<sup>48</sup> Tr. 2292 (ICI witness Strow).

<sup>49</sup> MCI Brief at 22, citing Tr. 2438, 2466.

<sup>50</sup> Tr. 1772 (MFS witness Meade).

<sup>51</sup> MCI Brief at 34, citing Docket No. 6865-U Order at p. 47; 47 C.F.R. § 51.615.

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In general, these intervenors also argued that BellSouth has not shown actual availability of access to unbundled elements, access to rights-of-way, and the other items required by Section 251. Instead, they argued, BellSouth's SGAT only provides promises to deliver at some future time, available on paper only, and in many cases not even available for testing, let alone actual use. They also argued that BellSouth has not yet received orders for some items, such as local transport and unbundled local switching,<sup>52</sup> so BST cannot verify that such items will be "available" if and when they are ordered.

MCI pointed out that BellSouth promises to provide unbundled loops to MCI and other competitors in a much longer time period than the 48 (or fewer) hours in which BellSouth establishes service to its own customers. MCI contended that such delays will greatly impede competition in local markets.<sup>53</sup>

AT&T and others pointed out that the problems experienced by ICI, MFS, and ACSI discussed during the hearings are likely to multiply as additional requests for unbundled loops are made in the future. Thus, AT&T asked that the Commission not endorse illusory promises relating to key elements of BellSouth's network, through approval of the Statement. (AT&T Brief at 12-13.)

Although the Statement says BellSouth will provide access to its operator services, AT&T objected that BST did not set forth how it would comply if any carrier requested access to operator services, or that such access actually could be provided. AT&T was also concerned that at the hearing, BellSouth could not confirm whether any carrier had requested access to operator services and whether such access had been provided.<sup>54</sup> AT&T and MCI both expressed concern that the Statement does not provide for immediate migration of "as-is" directory listings.<sup>55</sup>

AT&T also objected that BellSouth is not providing nondiscriminatory access to poles, ducts, conduits and rights-of-way in accordance with Section 251(b)(4). The Statement provides that CLECs must wait up to 20 days from submitting an order before BellSouth will confirm that space is available, and another 60 days before the CLEC will obtain a license from BellSouth (or other owner) of the pole or conduit. In contrast, BellSouth has access to the same information and use of the right-of-way, conduit or pole for itself immediately.<sup>56</sup> AT&T also expressed concern that it is

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<sup>52</sup> Tr. 409, 411 (BST witness Scheye); see also MCI Brief at 23, citing Tr. 2442, 2443 (MCI witness Agatson).

<sup>53</sup> MCI Brief at 20-21, citing Tr. 2436-37.

<sup>54</sup> AT&T Brief at 19, citing Tr. 412 (BST witness Scheye).

<sup>55</sup> AT&T Brief at 20; MCI Brief at 33; Tr. 2645, 2731 (MCI witness Martinez).

<sup>56</sup> AT&T Brief at 18-19, citing Tr. 403-05 (BST witness Scheye).

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premature to evaluate whether the Statement fully complies with Section 251(b)(4) because additional problems with respect to such access may surface once other problems have been resolved which have delayed facilities-based competition.

MCI criticized Attachment D of the SGAT regarding nondiscriminatory access to poles, ducts, conduits and rights-of-way, because it does not discuss the "critical issue" of the compensation to CLECs who have improved BellSouth's structure when another carrier subsequently attaches to the structure. MCI cited the FCC's First Report and Order (at ¶ 1214) which stated that the modifying party should be allowed to recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. (MCI Brief at 20.)

MCI also criticized the SGAT for not providing parity for such items as access to databases, and for not containing a commitment to supply information needed by CLECs to properly establish, implement and sustain their 911 networks.<sup>57</sup> According to MCI, BellSouth has not promised to provide critical network data, including rate center data and selective routing boundary information; and the SGAT does not establish procedures to reroute calls during times of network overload. Once again, the SGAT refers to an external handbook. (MCI Brief at 24, citing SGAT Art. VII, ¶ A.6, p. 14.) MCI also argued that the FCC has found access to incumbent LEC's Advanced Intelligent Network ("AIN") database and Service Creation Environment ("SCE")/Service Management System ("SMS") is required.

MCI charged that the SGAT is further deficient with respect to directory assistance services, in that it does not guarantee parity of features and performance for CLECs. (MCI Brief at 24, citing SGAT Art. VII, ¶ B.2, p. 14.)

As to number portability pursuant to Section 251(b)(2), AT&T objected that the SGAT makes no commitment for the delivery time on interim number portability, stating only that it will often be provided within 24 hours, and that BellSouth will commit only to discuss and agree on a time frame for each order upon receipt.<sup>58</sup> AT&T asserted that BST certainly can retain a number for a customer and route calls to a new location for its own purposes within a defined and much shorter period of time, and charged that BST proposes disparate treatment. (AT&T Brief at 21.)

MCI pointed out that the rates for interim local number portability were not reviewed or set by the Commission, and are proposed as interim, subject to true-up. MCI thus objected to the Statement's rates for interim local number portability. MCI also objected that the SGAT improperly allows carriers to block number portability when a customer has past due charges. Citing the FCC's Number Portability Order (see 47 C.F.R. Pt. 52, subpt. C), MCI argued that a carrier may not prevent a customer from porting its number to another carrier if the customer has unpaid charges. Further,

<sup>57</sup> MCI Brief at 24, citing Tr. 2636 (MCI witness Martinez).

<sup>58</sup> Tr. 415, 417 (BST witness Scheye).

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MCI contended that paragraph G of the SGAT's Attachment G is too vague in providing that number portability can be discontinued based upon BellSouth's determination as to whether another carrier is "impairing or interfering" its system. MCI's concern is that a vague standard could permit anticompetitive practices, and allow BellSouth to turn off number portability almost at will or at least during high traffic periods.<sup>59</sup>

With respect to the "change charge" in paragraph H of the SGAT's Article XIV, page 22, MCI argued that unilateral determinations and assessments by BellSouth without procedures to contest "slamming" allegations is inappropriate and unsuited to the newly competitive environment in local telephone services.<sup>60</sup>

ACSI noted that BellSouth testified that the SGAT does not include performance standards.<sup>61</sup> ACSI and others argued that such standards are necessary to ensure that CLECs are treated on a nondiscriminatory basis and to ensure that local markets are opened for competition as intended by the Act. (ACSI Brief at 6-7.)

## 2. Commission Decision

BellSouth's Statement represents a substantial effort to comply with the other requirements of Section 251 quoted above. However, these requirements require additional implementation by BellSouth in order to make elements, operations support systems, and billing and other systems actually available. In other words, those sections require more than a written statement with facial compliance. They require actions to be taken by the local exchange company or the incumbent LEC. Therefore, in order for the Commission to determine whether the Statement should be approved as complying with those sections, it is appropriate for the Commission to determine whether it reflects actual BellSouth compliance.

Nondiscriminatory access to operational support systems (OSS) is an integral part of providing access to unbundled network elements, as well as making services available for resale. The record shows that BellSouth has not yet demonstrated that it is able to fulfill these important aspects of the Statement's provisions on a nondiscriminatory basis that places CLECs at parity with BellSouth. In addition, the pre-ordering and ordering interim "web" interfaces, and the interfaces for maintenance and repair, are not projected to be fully operational for roughly two months.<sup>62</sup> BellSouth is still working on an interface for Customer Records Information System ("CRIS") billing and for

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<sup>59</sup> MCI Brief at 28, citing Tr. 2640 (MCI witness Martinez).

<sup>60</sup> MCI Brief at 34, citing Tr. 2647 (MCI witness Martinez).

<sup>61</sup> BST witness Scheye's prefiled rebuttal testimony at 67-68.

<sup>62</sup> Tr. 387-88, 802 (BST witness Scheye).

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local usage data, both of which may not be ready for two months.<sup>63</sup> Before BellSouth can offer the interfaces for actual CLEC use, testing must be completed. However, internal testing has not begun for some of the interfaces; and it is not yet known what standards for reliability BellSouth uses for its internal testing,<sup>64</sup> although comparative standards must be evaluated to ensure that the interfaces provide nondiscriminatory access. Consumer resale ordering interfaces have not completed systems readiness testing, or subsequent market readiness testing.<sup>65</sup> Thus it would be premature to allow the Statement to take effect. The Statement should not be approved so long as BellSouth has not demonstrated that it is able to actually provision the services of interconnection and access to unbundled elements, make services available for resale (including OSS interfaces), and other items listed in the Statement and required under Sections 251 and 252(d).

BellSouth continues to be engaged in a substantial effort to develop electronic interfaces. Many of these, including pre-ordering, ordering, directory listing, trouble reporting, and maintenance and repair, are projected to be available in at least a limited form by March 31, 1997; BellSouth also projects that work will continue with further improvements planned by December 31, 1997. As these milestones are met, BellSouth may present the results to the Commission and show whether they meet appropriate requirements.

As to making elements available upon CLEC request, there was evidence that BellSouth has been unable to provide certain unbundled loops as requested by new CLECs, cannot yet provide an unbundled network interface device ("NID"), and has experienced significant problems in testing and providing other elements that the Statement describes as available.<sup>66</sup> The Commission recognizes that not all the problems have been caused by BellSouth, but it remains the case that BellSouth has not yet completed its part to ensure that the items required under Section 251 will be actually available upon request by CLECs. Certain loops that are supposed to be unbundled, such as ADSL and HDSL, likewise are not currently available. ACSI's testimony documented significant problems that ACSI experienced in completing its initial unbundled loop cutovers from BellSouth and in providing quality service over BellSouth unbundled loops. Specifically, Mr. Robertson testified to undue delays and serious customer service disruptions experienced by ACSI in the provisioning of unbundled loops

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<sup>63</sup> Tr. 389-90 (BST witness Scheye).

<sup>64</sup> Tr. 3037, 3056-57, 3077 (BST witness Calhoun). Requests were made at the hearings for BellSouth to provide information on its internal standards. Such information has not been provided as of the date of this decision (March 20, 1997).

<sup>65</sup> Tr. 3043 (BST witness Calhoun).

<sup>66</sup> Tr. 3081 (BST witness Calhoun), Tr. 817 (BST witness Scheye), Tr. 1773-74 (MFS witness Meade), Tr. 2273-2289 (ICI witness Strow). The Commission notes that its rulings in the AT&T and MCI arbitrations (Dockets No. 6801-U and 6865-U) provided that CLEC direct connection to BellSouth's NID is to be considered on a CLEC-by-CLEC basis to verify that the CLEC has the technical ability to maintain proper safety conditions.

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and number portability. These are the subject of ACSI's complaints to the FCC and to this Commission in Docket No. 7212-U.<sup>67</sup>

BellSouth can improve the Statement by specifying the standards to which it can commit in providing interconnection and unbundled access to network elements. To demonstrate parity and nondiscriminatory interconnection and unbundled access, BellSouth may submit its internal standards for comparative purposes. BellSouth's internal standards need not be a part of the Statement, but will be relevant in documenting that CLECs are treated on a nondiscriminatory basis.

The Statement provides little information on how CLECs can actually order switching elements, on the time frames for ordering, or on billing and auditing. The SGAT refers to a document entitled "OLEC-to-BellSouth Ordering Guidelines (Facilities-based)" for information regarding ordering and delivery of unbundled switching. The latter document is not a part of the SGAT, but is a BellSouth document which could be revised unilaterally. In addition, the specifics are sketchy, which does not facilitate use by CLECs. The Statement should contain sufficient information to support the conclusion that CLECs have parity with BellSouth as to relevant functions including information for 911 networks, directory assistance services, operator call completion services, and access to databases including the call completion, call-routing and line information databases. The Statement should also clarify that customers can migrate their directory listings "as-is" when they change to a new local service provider. In addition, BellSouth has not yet provided an electronic interface for directory listings; the Commission required BST to set this up by April 1, 1997. The Statement should also provide for prompt notification to reseller CLECs if and when their customers switch to another provider, so the reseller can stop billing to former customers.

This is not to say that BellSouth will be unable to work through the development and testing necessary to verify that elements can actually be provisioned and billing systems will operate correctly. However, the impact of additional requests for unbundled loops and other items required by CLECs will place additional pressure on BellSouth's systems, both technological and personnel who need to be trained. In addition, the mere fact that some items have not been ordered by CLECs does not prove that BellSouth is unable to provide them; for such items, what is significant is whether BellSouth can verify availability through testing procedures. In other words, even if CLECs have not ordered a particular item, or if billing has not yet been initiated for a particular service, BellSouth should be able to demonstrate through testing that the item is functionally available or that the billing system will function accurately.

Given that BellSouth has not yet shown that it can reliably provide unbundled loops and other unbundled elements in the controlled environment of pilot tests, unbundled elements are not yet

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<sup>67</sup> ACSI Brief at 4, citing its witness Robertson's prefled direct testimony at 8-10. ACSI also presented evidence regarding BellSouth's practices with respect to building management preferred provider, exclusive sales agency, and contract sales arrangements, which the Commission does not reach with respect to ruling on the Statement.

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available as promised in the Statement and as required by Section 251.<sup>68</sup> In addition, the Statement's proposed interfaces are only interim solutions (see SGAT at 6). One example of an OSS interface that will not be fully operational for some time is on-line access to Customer Service Records ("CSRs").<sup>69</sup> Indeed, the Commission notes that in the arbitrations involving AT&T and MCI, BellSouth is required to develop such access in a manner that protects customer privacy, working with the CUC, and after developing such CSR access the parties must return to the Commission to demonstrate the appropriate privacy protections before the relevant interface is implemented.<sup>70</sup> Approval of the Statement under these conditions would be misleading by stating that BellSouth "generally offers" items that are not actually available.

With respect to interim number portability, the rates are interim, subject to true-up. As mentioned previously, establishing such interim number portability rates on a general basis as a part of a Statement may violate the law against retroactive ratemaking. Also, the Commission has not determined whether these interim rates are cost-based. Therefore as a matter of policy if not as a matter of law, an additional basis for rejecting the Statement is the interim nature of the interim number portability rates which are subject to true-up and which the Commission has not determined to be cost-based. In addition, if BellSouth submits a revised Statement that permits blocking of number portability when a customer has past due charges but has not been disconnected, BellSouth should also submit a supporting argument showing why BellSouth believes that number portability may be used as a method of enforcing the recovery of past due amounts. BellSouth should also attempt to revise the Statement's standard regarding shutting down of number portability to ensure that such shutting down occurs only during network emergencies or on the basis of other, specific technical requirements.

With respect to resale, the Commission notes that subsequent to BellSouth's January 22, 1997 filing of the Statement, the Commission undertook further review and action to approve BellSouth's resale tariff in Docket No. 6352-U. Therefore, revision of the SGAT should include any revisions necessary to conform to the resale tariff and related decisions in Docket No. 6352-U. With respect to charges for switching local exchange carriers or unauthorized transfers of customers, the Statement should be subject to any Commission rulings in current or future proceedings on these topics.

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<sup>68</sup> See Tr. 2010 (Sprint witness Bort), Tr. 1791 (MFS witness Meade), Tr. 2049 (AT&T witness Pfau); prefiled testimony of MCI witness Martinez at 15.

<sup>69</sup> Tr. 1979, 1986, 3128-30.

<sup>70</sup> This was ordered in the AT&T arbitration, Docket No. 6801-U, MCI arbitration, Docket No. 6865-U, and Sprint arbitration, Docket No. 6958-U.

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**E. Other Requirements of Sections 251(c), (d), (e) and (g)**

Section 251 contains other requirements within subsections (c), (d), (e) and (g) as to which the Commission finds no deficiency in the Statement, or which are not directly applicable to the Statement.

251 (c)(1) relates to the duty to negotiate. It provides for:

(1) DUTY TO NEGOTIATE. — The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

Although ICI raised numerous questions at the hearing regarding BellSouth's negotiations, ICI did not appear to ask for rejection of the Statement upon those grounds. Many other companies have negotiated agreements, and the arbitrations to date have not proven bad faith on the part of BellSouth. Any confusion of the sort ICI may have experienced appear to have been resolved by the very submission of BellSouth's proposed Statement. The Commission does not find any deficiency with respect to BellSouth's negotiations, and therefore does not base its rejection decision upon any concern about BellSouth's good faith in negotiations.

Section 251(c)(5) relates to BellSouth's duty to give CLECs notice of certain changes. It provides:

(5) NOTICE OF CHANGES. — The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

The Statement reflects terms and conditions that were established pursuant to negotiation and arbitration in the AT&T and MCI arbitration cases, Dockets No. 6801-U and 6865-U. The Commission does not find any deficiency with respect to this portion of the Statement, and therefore does not base its rejection decision upon any concern about BellSouth's provision for notice to CLECs of changes.

Section 251(d)(2) involves directions to the FCC regarding its determinations for regulations implementing the requirements for unbundled access to network elements under Section 251(c)(3). It provides:

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(2) ACCESS STANDARDS.— In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether —

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

The Commission finds that no issue has been raised in this case involving this provision of the Act. In addition, this provision of the Act speaks to the FCC, not directly to the Georgia Commission. Therefore, the Commission concludes that this provision has no bearing on its decision in this Order as to whether to approve, reject, or allow the Statement to take effect.

Section 251(d)(3) also speaks to the FCC in its development of regulations implementing Section 251. It provides:

(3) PRESERVATION OF STATE ACCESS REGULATIONS.— In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirement of this section and the purposes of this part.

The Commission finds that no issue has been raised in this case involving this provision of the Act. In addition, this provision of the Act speaks to the FCC, not directly to the Georgia Commission. Therefore, the Commission concludes that this provision has no bearing on its decision in this Order as to whether to approve, reject, or allow the Statement to take effect.

Section 251(e)(1) relates to the FCC's activities regarding telecommunications numbering. It provides:

(1) COMMISSION AUTHORITY AND JURISDICTION.— The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

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The Commission finds that no issue has been raised in this case involving this provision of the Act. In addition, this provision of the Act speaks to the FCC, not directly to the Georgia Commission. The only issues raised regarding access to telephone numbers were raised under separate provisions of the Act discussed previously in this Order. Therefore, the Commission concludes that this Section 251(e)(1) has no bearing on its decision in this Order as to whether to approve, reject, or allow the Statement to take effect.

Section 251(g) pertains to services provided to interexchange carriers ("IXCs") by local exchange carriers. It provides:

(g) CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS.— On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

The Commission finds that no issue has been raised in this case involving this provision of the Act. In addition, this provision of the Act speaks to the FCC, not directly to the Georgia Commission. Therefore, the Commission concludes that this provision of the Act has no bearing on its decision in this Order as to whether to approve, reject, or allow the Statement to take effect.

#### IV. ORDERING PARAGRAPHS

For the reasons discussed in the foregoing sections of this Order, the Commission finds and concludes that it would be premature to approve BellSouth's proposed Statement of Generally Available Terms and Conditions as it stands, or to allow the Statement to take effect, and that the Statement should be rejected pursuant to Section 252(f) of the Act. BellSouth clearly undertook a substantial effort in developing and supporting its Statement, however, and the Commission's decision is simply based on finding that various aspects of the Statement are premature, not fully developed, or require additional support.

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The Commission further concludes that rejection of the Statement now, with the identification of premature and deficient aspects, is a better course than simply allowing the Statement to take effect and continuing to review it. This is because the latter course would place BellSouth in jeopardy of having an effective Statement that is subject to subsequent rejection. The approach the Commission adopts and applies in this Order provide BellSouth with more certainty, even though it also does not grant BellSouth the affirmative approval which BellSouth requested.

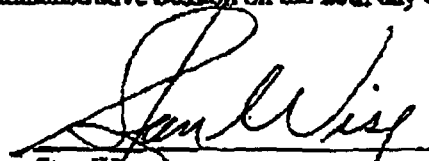
The Commission will keep this docket open for review of any revised Statement that BellSouth may choose to submit. Such Commission review will be for the purpose of addressing aspects of the Statement that are currently premature or deficient, as discussed in this Order.

**WHEREFORE THE COMMISSION ORDERS that:**

- A. BellSouth's Statement of Generally Available Terms and Conditions is rejected as being a premature and incomplete Statement, for the reasons discussed in the preceding sections of this Order, pursuant to Section 252(f) of the Telecommunications Act of 1996.
- B. This docket shall be kept open for Commission review of any revised Statement that BellSouth may choose to submit, in order to address the aspects of the Statement that are currently premature or deficient as discussed in this Order.
- C. All statements of fact, law, and regulatory policy contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and conclusions of regulatory policy of this Commission.
- D. A motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.
- E. Jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 20th day of March, 1997.

  
Terri M. Lyndall  
Executive Secretary

  
Stan Wisc  
Chairman

3/21/97  
Date

3-21-97  
Date

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